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United States Attorney

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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 07-00745
)	
Plaintiff,)	
)	UNITED STATES' SENTENCING
v.)	MEMORANDUM
)	
JOSE TORRES-CALDERON,)	
)	Date: July 10, 2008
Defendant.)	Time: 9:00 a.m.

INTRODUCTION

The United States hereby submits its sentencing memorandum in the above-referenced case. On April 16, 2008, the defendant entered an "open" plea to the single count information charging him with illegal re-entry following deportation, in violation of Title 8, United States Code, Section 1326. He is scheduled to be sentenced on July 16, 2008. The government respectfully objects to United States Probation Office's Presentence Investigation Report ("PSR") in that it does not account for the drug trafficking offense for which the defendant received a conviction and a four year sentence of imprisonment. This conviction would result in a 16 level enhancement under United States Sentencing Guidelines (U.S.S.G.) §2L1.2(b)(1)(i), or at least an 8 level enhancement under Guidelines § 2L(B)(1)(B) as an aggravated felony.

1 Otherwise the government agrees with the PSR, and for the reasons stated below, the government
2 recommends a sentence of 77 months imprisonment.

3 **THE SALE OF COCAINE CONSTITUTES AN AGGRAVATED FELONY AND A**
4 **DRUG TRAFFICKING OFFENSE**

5 The Immigration and Nationality Act (“INA”) § 101(a)(43)(B), 8 U.S.C.
6 §1101(a)(43)(B), defines the term “aggravated felony” to include “illicit trafficking in a
7 controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as
8 defined in section 924(c) of Title 18).” The term “drug trafficking crime” is defined as “any
9 felony punishable under the Controlled Substances Act, the Controlled Substances Import and
10 Export Act, or the Maritime Drug Law Enforcement Act.” 18 U.S.C. § 924(c). “The term
11 [aggravated felony] applies to an offense...whether in violation of Federal or State law and
12 applies to such an offense in violation of the law of a foreign country for which the term of
13 imprisonment was completed within the previous 15 years.” 8 U.S.C. 1101(a)(43). “[A] state
14 drug offense is an aggravated felony for immigration purposes only if it would be punishable as a
15 felony under federal drug laws or the crime contains a trafficking element. *Cazarez-Gutierrez v.*
16 *Ashcroft*, 382 F.3d 905, 912 (9th Cir. 2004).

17 In determining whether a state drug offense qualifies as an aggravated felony, the first
18 task is to “look to the statute under which the person was convicted and compare its elements to
19 the relevant definition of an aggravated felony in 8 U.S.C. §1101(a)(43).” *Chang v. INS*, 307
20 F.3d 1185, 1189 (9th Cir. 2002). Under the approach set out by the United States Supreme Court
21 in *Taylor v. United States*, 495 U.S. 575, 602 (1990), the first task “is to make a categorical
22 comparison.” *Chang*, 307 F.3d at 1189. According to this “categorical approach,” the court
23 should not examine the facts underlying the prior offense.” *Taylor*, 495 U.S. at 602. In other
24 words, an offense qualifies as an aggravated felony “if and only if the full range of conduct
25 covered by [the criminal statute] falls within the meaning of that term.” *United States v. Baron-*
26 *Medina*, 187 F3d. 1144 (9th Cir. 1999).

27 “If the statute is not a categorical match because it criminalizes both conduct that does
28 and does not qualify as an aggravated felony,” the Court then proceeds to a “modified categorical

approach.” *Ferreira v. Ashcroft*, 390 F.3d 1091, 1095 (9th Cir. 2004). Under this “modified categorical approach,” the court conducts “a limited examination of documents in the record of conviction to determine if there is sufficient evidence to conclude that a defendant was convicted of the elements of the generically defined crime even though his or her statute of conviction was facially over inclusive.” *Chang*, 307 F.3d at 1189. The record of conviction includes the state charging documents, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceedings, and the judgment. *Ferreira*, 390 F.3d at 1095. An abstract of judgment is also clearly appropriate for review when applying the modified categorical approach. *United States v. Smith*, 390 F.3d. 661, 664 (9th Cir. 2004) amended by 405 F.3d 726 (9th Cir.), cert. denied, 546 U.S. 905, 126 S. Ct. 252, 163 L.Ed.2d 2390 (2005).¹

The statute at issue here is California Health & Safety Code § 11352(a), which provides, in pertinent part, that:

Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054...shall be punished by imprisonment in the state prison for three, four, or five years.

California Health & Safety Code § 11352(a). Cocaine is classified as a controlled substance under California Health & Safety Code 11054(f)(1).

In *United States v. Rivera-Sanchez*, 247 F3d 905, 909 (9th Cir. 2001)(en banc)², the Ninth Circuit concluded that a conviction under California Health & Safety Code § 11352(a) does not automatically constitute an aggravated felony, because, unlike the federal drug laws, the California provision criminalizes solicitation. Accordingly, where an individual is convicted of violating 11352(a), it is necessary to employ the modified categorical approach to determine whether the conduct for which the individual was convicted would have constituted a felony drug crime under federal law or contained a trafficking element.

Turning first to the state charging document, Torres-Calderon was charged with having

¹ The 9th Circuit may be considering a decision en banc that could affect which documents are judicially noticeable.

² Superseded by statute on other grounds as noted in *United States v. Vidal*, 426 F.3d 1011, 1014-15 (9th Cir. 2005).

1 violated California Health & Safety Code § 11352 by selling or having possessed for sale 28.5
2 grams of cocaine. (Ex. A). While this statute encompasses a wider range of conduct, each count
3 continues by specifically charging Torres-Calderon with having possessed for sale or having sold
4 28.5 grams or more of cocaine within the meaning of California Penal Code §1203.073(B)(1).
5 (Id.). Sale of cocaine is a felony drug trafficking offense under federal law. 21 U.S.C. §§
6 841(a)(1) and 924.

7 The Abstract of Judgment (Ex. B) and Court Minutes (Ex. C), taken together, indicate
8 that Torres-Calderon pled no contest to Count 1 of the Information (Ex. A), which charged him
9 with violating California Health & Safety Code § 11352. The Abstract of Judgment indicates
10 “sale of cocaine” was the crime to which Torres-Calderon pled. It also indicates that Torres-
11 Calderon was denied probation under the California Penal Code § 1203.073(b)(1), which
12 specifically denies probation to any person, “convicted of ... violating Section 11352 of the
13 Health and Safety Code by selling, a substance containing 28.5 grams or more of cocaine....”
14 Penal Code § 1203.073(b)(1). The plea of no contest to Count 1 and the admission of possession
15 for sale of a certain quantity of cocaine for purposes of Penal Code § 1203.073(b)(1) all
16 demonstrate that Torres-Calderon was convicted of a drug trafficking crime which would have
17 been a felony drug offense if charged under federal law.

18 Application of the modified categorical approach compels the conclusion that the
19 defendant was convicted of an aggravated felony in 1992. 8 U.S.C. § 1101(a)(43)(B). Therefore,
20 at the very least, an 8 level enhancement applies to Torres-Calderon’s base offense level.
21 However, since he was convicted of selling or possessing for sale a certain quantity of
22 cocaine, and was sentenced to 4 years imprisonment, as reflected in the Abstract of Judgment, the
23 defendant was also convicted of a drug trafficking offense within meaning of United States
24 Sentencing Guidelines 2L1.2(b)(1)(I), and therefore, a 16 level enhancement applies.

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SENTENCING GUIDELINES CALCULATION

Pursuant to the United States Sentencing Guidelines, which are advisory after the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the defendant has a total offense level of 24. The defendant's base offense level is 8. U.S.S.G. §2L1.2. The base offense level is increased by sixteen (16) levels, to 24, if the defendant previously was deported after a conviction for a felony that is a drug trafficking offense, and the sentence imposed exceeded thirteen (13) months.³ Pursuant to U.S.S.G. §§ 3E1.1(a) and (b), Acceptance of Responsibility, the defendant is eligible for a downward adjustment of three levels, resulting in an adjusted offense level of 21.

The Probation Officer calculates that the defendant has 16 criminal history points, and therefore, falls into Criminal History Category VI. [PSR 6-12.] An adjusted offense level of 21 when indexed with a Criminal History Category of VI yields a guideline range of 77-96 months.

THE GOVERNMENT'S SENTENCING RECOMMENDATION

The government recommends a sentence of 77 months imprisonment, 3 years of supervised release, no fine, and a \$100 special assessment.

The defendant has serious felony convictions that span a 15-year period from 1992 to 2007. Arguably, his most serious offense occurred in 1992, when he was convicted for selling cocaine. Since then, the defendant's convictions include 2nd degree burglary in 2003, where the stole or attempted to steal \$3000 worth of over-the counter medication from a grocery store; and possession of a controlled substance 2005. These narcotics related convictions indicate that the defendant is still a danger to the community. His other offenses, including taking a vehicle without consent, a felony in 2007, suggest that the defendant is as unwilling to follow the law now as he was in 1992. Since a sentencing court must consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553(a)(6), the government respectfully recommends a sentence of 77 months imprisonment, which is at the low-end of a fairly significant guideline range.

Finally, the PSR indicates that the defendant does not have the ability to pay a fine.

1 Therefore, the government asks the Court not to impose one. [PSR18.] The Court is required to
2 impose a special assessment of \$100.00.

3
4 DATED: July 10, 2008

Respectfully submitted,

5 JOSEPH P. RUSSONIELLO

6 United States Attorney
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10

11 _____/s/_____

12 CHAD MANDELL

13 Special Assistant United States Attorney
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19 cc: Honorable Jeremy Fogel

20 Alfredo Morales, Attorney for Defendant
21
22
23
24
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EXHIBIT A

FILED

MAR 10 1992

WARREN SLOCUM County Clerk
By Warren Slocum
DEPUTY CLERK

JAMES F. FOX
DISTRICT ATTORNEY
SAN MATEO COUNTY
BY: DEAN E. JOHNSON
DEPUTY DISTRICT ATTORNEY
401 MARSHALL ST
REDWOOD CITY, CA 94063
TELEPHONE: (415) 363-4636
ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,

V.

JOSE TORRES-CALDERON
216 IVY DR
MENLO PARK, CA 94025

AKA JAVIER HUGO HERNANDEZ
AKA GERARDO PULIDO-MENDOZA
AKA GERARDO PULIDO
AKA GERARDO MENDOZA
AKA CHICKEN

*SALVADOR RAMIREZ COLIN
1944 PULGAS AV
EAST PALO ALTO, CA 94303

AKA RAMIREZ COLIN SALVADOR
AKA SALVADOR COLIN RAMIREZ
AKA RAMIREZ SALVADOR COLIN

DEFENDANT(S).)

DA CASE: INF 0032003
(FELONY)

INFORMATION

CMS

SC28275

CALENDAR MAR 10 1992 FS

THE SAID DEFENDANT(S) IS/ARE ACCUSED BY THE DISTRICT
ATTORNEY OF THE COUNTY OF SAN MATEO OF THE STATE OF CALIFORNIA,
BY THIS INFORMATION, OF THE FOLLOWING CRIME(S):

COUNT: 001, ON OR ABOUT 02/13/1992, JOSE TORRES-CALDERON, AND SALVADOR RAMIREZ COLIN, DID WILLFULLY AND UNLAWFULLY TRANSPORT, IMPORT INTO THE STATE OF CALIFORNIA, SELL, FURNISH, ADMINISTER, OR GIVE AWAY, OR OFFER TO TRANSPORT, IMPORT INTO THE STATE OF CALIFORNIA, SELL, FURNISH, ADMINISTER, OR GIVE AWAY, OR ATTEMPT TO IMPORT INTO THE STATE OF CALIFORNIA OR TRANSPORT A CONTROLLED SUBSTANCE TO WIT: COCAINE, IN VIOLATION OF HEALTH AND SAFETY CODE SECTION 11352, A FELONY.

IT IS FURTHER ALLEGED THAT DEFENDANT JOSE TORRES-CALDERON, POSSESSED FOR SALE OR SOLD 28.5 GRAMS OR MORE OF COCAINE, A SUBSTANCE CONTAINING 28.5 GRAMS OR MORE OF COCAINE OR 57 GRAMS OR MORE OF A SUBSTANCE CONTAINING COCAINE WITHIN THE MEANING OF PENAL CODE SECTION 1203.073(B)(1).

IT IS FURTHER ALLEGED THAT DEFENDANT SALVADOR RAMIREZ COLIN, POSSESSED FOR SALE OR SOLD 28.5 GRAMS OR MORE OF COCAINE, A SUBSTANCE CONTAINING 28.5 GRAMS OR MORE OF COCAINE OR 57 GRAMS OR MORE OF A SUBSTANCE CONTAINING COCAINE WITHIN THE MEANING OF PENAL CODE SECTION 1203.073(B)(1).

COUNT: 002, ON OR ABOUT 02/07/1992, JOSE TORRES-CALDERON, DID WILLFULLY AND UNLAWFULLY TRANSPORT, IMPORT INTO THE STATE OF CALIFORNIA, SELL, FURNISH, ADMINISTER, OR GIVE AWAY, OR OFFER TO TRANSPORT, IMPORT INTO THE STATE OF CALIFORNIA, SELL, FURNISH, ADMINISTER, OR GIVE AWAY OR ATTEMPT TO IMPORT INTO THE STATE OF CALIFORNIA OR TRANSPORT A CONTROLLED SUBSTANCE, TO WIT: COCAINE, IN VIOLATION OF HEALTH AND SAFETY CODE SECTION 11352, A FELONY.

1 COUNT: 001, ON OR ABOUT 02/13/1992, JOSE TORRES-CALDERON,
2 AND SALVADOR RAMIREZ COLIN, DID WILLFULLY AND UNLAWFULLY
3 TRANSPORT, IMPORT INTO THE STATE OF CALIFORNIA, SELL, FURNISH
4 ADMINISTER, OR GIVE AWAY, OR OFFER TO TRANSPORT, IMPORT INTO THE
5 STATE OF CALIFORNIA, SELL, FURNISH, ADMINISTER, OR GIVE AWAY, OR
6 ATTEMPT TO IMPORT INTO THE STATE OF CALIFORNIA OR TRANSPORT A
7 CONTROLLED SUBSTANCE, TO WIT: COCAINE, IN VIOLATION OF HEALTH
8 AND SAFETY CODE SECTION 11352, A FELONY.

9 IT IS FURTHER ALLEGED THAT DEFENDANT JOSE TORRES-CALDERON,
10 POSSESSED FOR SALE OR SOLD 28.5 GRAMS OR MORE OF COCAINE, A
11 SUBSTANCE CONTAINING 28.5 GRAMS OR MORE OF COCAINE OR 57 GRAMS
12 OR MORE OF A SUBSTANCE CONTAINING COCAINE WITHIN THE MEANING OF
13 PENAL CODE SECTION 1203.073(B)(1).

14 IT IS FURTHER ALLEGED THAT DEFENDANT SALVADOR RAMIREZ COLIN
15 , POSSESSED FOR SALE OR SOLD 28.5 GRAMS OR MORE OF COCAINE, A
16 SUBSTANCE CONTAINING 28.5 GRAMS OR MORE OF COCAINE OR 57 GRAMS
17 OR MORE OF A SUBSTANCE CONTAINING COCAINE WITHIN THE MEANING OF
18 PENAL CODE SECTION 1203.073(B)(1).

19
20 COUNT: 002, ON OR ABOUT 02/07/1992, JOSE TORRES-CALDERON,
21 DID WILLFULLY AND UNLAWFULLY TRANSPORT, IMPORT INTO THE STATE OF
22 CALIFORNIA, SELL, FURNISH, ADMINISTER, OR GIVE AWAY, OR OFFER TO
23 TRANSPORT, IMPORT INTO THE STATE OF CALIFORNIA, SELL, FURNISH,
24 ADMINISTER, OR GIVE AWAY, OR ATTEMPT TO IMPORT INTO THE STATE OF
25 CALIFORNIA OR TRANSPORT A CONTROLLED SUBSTANCE, TO WIT: COCAINE,
26 IN VIOLATION OF HEALTH AND SAFETY CODE SECTION 11352, A FELONY.

27
28

1 JAMES P FOX
 2 DISTRICT ATTORNEY
 3 SAN MATEO COUNTY
 4 BY: MORLEY B PITT
 5 DEPUTY DISTRICT ATTORNEY
 6 1050 MISSION RD
 7 SOUTH SAN FRAN, CA 94080
 8
 9 TELEPHONE: (415) 877-5454
 10
 11 ATTORNEYS FOR PLAINTIFF
 12

13 MUNICIPAL COURT OF CALIFORNIA, COUNTY OF SAN MATEO

14 SAN MATEO COUNTY JUDICIAL DISTRICT

15 THE PEOPLE OF THE STATE OF CALIFORNIA,) SM CASE
 16) DA CASE: COM 0032005
 17 PLAINTIFF,) (FELONY)
 18)
 19 V.) COMPLAINT
 20)
 21 JOSE TORRES-CALDERON)
 22 216 IVY DR)
 23 MENLO PARK, CA 94025)
 24)
 25 AKA JAVIER HUGO HERNANDEZ)
 26 AKA GERARDO PULIDO-MENDOZA)
 27 AKA GERARDO PULIDO)
 28 AKA GERARDO MENDOZA)
 29 AKA CHICKEN)
 30)
 31 *SALVADOR RAMIREZ COLIN)
 32 1944 PULGAS AV)
 33 EAST PALO ALTO, CA 94303)
 34)
 35 AKA RAMIREZ COLIN SALVADOR)
 36 AKA SALVADOR COLIN RAMIREZ)
 37 AKA RAMIREZ SALVADOR COLIN)
 38)
 39)
 40 DEFENDANT(S))

41 -----
 42
 43 I, THE UNDERSIGNED, SAY, ON INFORMATION AND BELIEF, THAT
 44
 45 IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA:
 46
 47
 48

EXHIBIT B

ABSTRACT OF JUDGMENT - PRISON COMMITMENT SINGLE OR CONCURRENT COUNT FORM

FORM DSL 1291

(ENDORSED)

FILED

APR 27 1992

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

BRANCH

CASE NUMBER

PEOPLE OF THE STATE OF CALIFORNIA vs. JOSE TORRES-CALDERONDEFENDANT: JOSE TORRES-CALDERONAKA: JAVIER HUGO HERNANDEZ ETC.☒ PRESENT
☐ NOT PRESENT

C-19275-01

WARREN SLOCUM, County Clerk
By VIRGILIO S. CASTRO
DEPUTY CLERKCOMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENTAMENDED
ABSTRACT ☐DATE OF HEARING: 04-14-92

DEPT NO

03

JUDGE

ARAM SERVERIAN

CLERK

K. SULLIVAN

REPORTER

C. METOYER

COUNSEL FOR PEOPLE

D. JOHNSON

COUNSEL FOR DEFENDANT

L. BRAMY

PROBATION NO. OR PROBATION OFFICER

NONE STATED.

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY OR ALTERNATE FELONY MISDEMEANOR:

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTED BY			TIME IMPROVED EARS MONTHS	
					MO	DAY	YEAR	JURY TRIAL	CRIMINAL TRIAL	PLEA		RETRIBUTION
1	INS	11352 w/	SALE OF COCAINE		22	04	14	92			X	4

2. ENHANCEMENTS charged and found true **TIED TO SPECIFIC COUNTS** (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.
For each count, list enhancements horizontally. Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385.
Add up time for enhancements on each line and enter the total in right-hand column.

Count	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total

3. ENHANCEMENTS charged and found true **FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS** (mainly § 667-series) and OTHER.

List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same category, repeat it for each enhancement (e.g., #2 prior and prior prison terms under § 667 E, and § 667 times). Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Add any other enhancement not provided for in space 2.

Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total

4. OTHER ORDERS:

Defendant shall pay a \$100 restitution fund fine
as mandated by Government Code Section 13967.

5. TIME STAYED § 1170 (a)(1) (DOUBLE BASE LIMIT)

6. TOTAL TERM IMPOSED

1

7. THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCES:

8. EXECUTION OF SENTENCE IMPOSED

A. ☒ AT THE SENTENCE B. ☐ AT PRESENTENCE PURSUANT TO C. ☐ AFTER REVOCATION OF D. ☐ AT PRESENTENCE PURSUANT TO PAROLE E. ☐ OTHER

9. DATE OF SENTENCE IMPOSED: 04-14-92 CREDITED: 03 TOTAL DAYS: 62 LOCAL JAIL AT: 31 STATE JAIL AT: 31

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF TO BE RECEIVED

☒ DETAIN WITH ☐ INTO THE CUSTODY OF THE DETENTION OR ☐ JAIL INSTITUTION FOR WOMEN - FRONTIER ☐ JAIL INSTITUTION FOR MEN - CHICO ☐ JAIL INSTITUTION FOR MEN - CHICO ☐ JAIL INSTITUTION FOR MEN - CHICO ☐ JAIL INSTITUTION FOR MEN - CHICO

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

REPORTER'S SIGNATURE

DATE

APR 27 1992

ABSTRACT OF JUDGMENT - COMMITMENT SINGLE OR CONCURRENT COUNT FORM

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

JUDGE DEPT. NO. 03 CASE NO. C28275-01 DATE 14 APR 1992
 DEPUTY CLERK SULLIVAN COURT REPORTER C. MONTGOMERY
 HONORABLE ARAM SERVERIAN

TITLE OF ACTION: PEOPLE ETC. VS. JOSE TORRES-CALDERON
 AKA JAVIER HUGO HERNANDEZ, GERARDO PULIDO-MENDOZA,
 NATURE OF EVENTS: PRE TRIAL CONFERENCE JT 5-4
 VS 11352HS 1203.073(B)(1)PC, VS 11352HS 1203.073(B)(1)PC

SR INT L COOKS

(PARTIES AND COUNSEL CHECKED IF PRESENT)
 DEFENSE COUNSEL L. BRAMY
 DISTRICT ATTORNEY BY D. JOHNSON DDA

DEFENDANT ☒ NOT PRESENT ☒ PRESENT ☒ I/C ☐ RETURN/SURRENDER ON BW
 PRE-TRIAL CONFERENCE ☒ HELD ☐ NOT HELD ☐ RESET TO ☐ AT ☐
 JURY TRIAL OF 5/4 ☒ VACATED/RESET FOR ☐ AT ☐ ASSIGNED ☐
 ON ☐ MOTION, INFORMATION/INDICTMENT AMENDED
 AS FOLLOWS:

☒ CHANGE OF PLEA FORM FILED. ☒ DEFENDANT ADVISED OF RIGHTS, WAIVED THE SAME
☒ DEFENDANT ADVISED OF PERIOD OF PAROLE PURSUANT TO SEC. 1170.1 PC.
☒ DEFENDANT ENTERED A NEW PLEA OF 11352 HS NO CONTEST 1203.073(B)(1) GUILTY TO: COUNT 1 VS
1203.073(B)(1); ALLEGATION NO. 1 AS TO COUNT 1 VS
 COUNT VS; COUNT VS
 ALLEGATION NO. AS TO COUNT VS

☒ MOTION TO DISMISS REMAINING COUNTS/ALLEGATIONS ☒ UNDER SUBMISSION TO ☒
☒ GRANTED.

STIPULATED FACTUAL BASIS FOR PLEA.
 COURT ACCEPTS THE PLEA AND FINDS DEFENDANT GUILTY OF THE CHARGE TO WHICH
 HE/SHE PLED NOLO CONTENDERE.
 DEFENDANT WAIVED FORMAL ARRAIGNMENT FOR JUDGMENT, STATED NO LEGAL CAUSE WHY
 SENTENCE SHOULD NOT NOW BE PRONOUNCED, AND MOVED FOR PROBATION/DIVERSION.
 DEFENDANT WAIVED TIME FOR SENTENCE. ☒ PRE-SENTENCE REPORT WAIVED.
 IMPOSITION OF SENTENCE SUSPENDED
 PROBATION REPORT AND SENTENCE SET FOR DONLON AT 163/234
 CRIMINAL PROCEEDINGS SUSPENDED. DOCTORS
 APPOINTED TO EXAMINE THE DEFENDANT UNDER SEC. 33
 STIPULATED THAT THE COURT/PROBATION MAY APPOINT ANOTHER DOCTOR EX PARTE
 SHOULD THE NAMED DOCTORS BE UNAVAILABLE.
 RECEIPT OF DOCTORS' REPORTS SET FOR AT
 DEFENDANT FAILING TO APPEAR, WITHOUT SUFFICIENT EXCUSE
 BAIL FORFEITED ☐ O.R. REVOKED.
 BENCH WARRANT ORDERED ISSUED WITH ☐ NO BAIL ☐ BAIL SET AT \$163/234
 DEFENDANT APPEARED ☐ BW ORDERED RECALLED ☐ BAIL ☐ O.R. REINSTATED
 MOTION FOR ISSUANCE OF BENCH WARRANT/FORFEITURE OF BAIL/REVOCATION OF O.R.
 SUBMITTED/CONTINUED TO AT
 MOTION FOR ☐ REDUCTION OF BAIL ☐ RELEASE O.R. ☐ GRANTED ☐ DENIED.
 BAIL RESET \$163/234
☒ DEFENDANT ☒ REMANDED; REMAINS ☐ I/C ☐ BAIL ☐ O.R. ☐ ORDERED TO APPEAR
 BAIL EXONERATED
 BENCH WARRANT RETURNED AND SERVED.
 DATE 14 APR 1992 PROCEEDINGS
 JOSE TORRES-CALDERON CRIMINAL MINUTE FORM 2

CASE NO. C-28275 PEOPLE OF THE STATE OF CALIFORNIA vs JOSÉ TORRES
 (Sentencing Attachment - State Prison) CAUTION

Sentence is imposed as follows:

☒ Defendant is committed to: ☐ Department of Corrections for
☐ California Youth Authority (pursuant to Sec. 1731.5(b) WIC) for
(M) 4 YEARS

consecutive / concurrent to _____
☒ Credit for 62 actual days served, plus 31 days good time / work time for a total
 of 93 days. Defendant to be delivered by the Sheriff to the Director of Corrections:

☒ California State
 Prison,
 San Quentin

☐ Central California
 Women's Facility,
 Chowchilla

☐ to be housed at California
 Youth Authority, pursuant
 to Sec. 1731.5(c) WIC

☐ Defendant to be brought before this Court for further proceedings if not accepted by CYA.

☒ Defendant shall pay a \$100.00 restitution fund fine as mandated by Government Code Section 13967.

☐ Defendant shall pay fine of \$ _____ plus penalty assessment of \$ _____ plus
 \$ _____ pursuant to Section 11372.5 H&S plus \$ _____ pursuant to Section 11372.7 H&S.
 Pay fine of \$ _____ pursuant to Section 290.3PC.

Payments to be made to Revenue Services. Payment due date if total fines payable are \$500.00 and over

☐ Genetic marker testing pursuant to Section 290.2PC.

☐ AIDS testing pursuant to Section 1202.1PC.

DOCT DOES NOT HAVE ABILITY
TO REIMBURSE SAN MATEO CO
FOR CT. APPROP CO

Dated: 4/14/02 Sentencing Attachment

Criminal Minute Form 5
 State Prison